Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

☑ ☐ ☐ ☐ ☐ ☑ Rule

Pilot Extension of Time Period for Commission Action Date Expires

☐ ☐ 19b-4(f)(1) 19b-4(f)(4)

☐ ☐ 19b-4(f)(2) 19b-4(f)(5)

☐ ☑ 19b-4(f)(3) 19b-4(f)(6)

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Phlx proposes an amendment to Phlx Rule 607 relating to the NMS linkage plan.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name John Last Name Dayton

Title Director

E-mail john.dayton@phlx.com

Telephone (435) 783-6415 Fax 

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 11/01/2007

By Carla Behnfeldt Director

(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.
The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to amend Phlx Rule 607 to remove language regarding the NMS Linkage Plan ("Plan"). The Plan was utilized by certain exchanges, including Phlx, for the purpose of routing and receiving orders in NMS Stocks. The Plan ended by its own terms on June 30, 2007.\(^3\)

A notice of the proposed rule change for publication in the [Federal Register](https://www.federalregister.gov) is attached hereto as Exhibit 1 and the text of amended Phlx Rule 607 is set forth below:

Brackets indicate deletions.

**Rule 607. Covered Sale Fee**

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses.

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD's Alternative Display Facility ("ADF Participant"), which were routed through the Exchange's Routing Facility, as described in Rule 185(g), during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

[The Exchange may enter into arrangements with other exchanges or ADF Participants to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant]

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through the NMS Linkage Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the NMS Linkage Plan.]

2. Procedures of the Self-Regulatory Organization

The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on August 22, 2007.

Questions and comments on the proposed rule change may be directed to John Dayton, Director and Counsel, at (435) 783-6415, or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to update Phlx Rule 607 to reflect the termination of the Plan. Phlx Rule 607 permits Phlx to collect the Covered Sale Fee\(^4\) from its members and member organizations. In order to facilitate the collection of the Covered Sale Fee, Phlx amended Phlx Rule 607 to permit the Exchange to enter into agreements with other exchanges and with Participants in NASD's (n/k/a FINRA) Alternative Display Facility ("ADF Participant") to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through the Plan and when other exchanges or ADF

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\(^4\) Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange on members and member organizations.
Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the Plan.\(^5\)

With the termination of the Plan, the agreements with the other exchanges and the ADF Participants are no longer needed.\(^6\) When the Plan began, certain exchanges and ADF Participants were unable to supply clearing or member information on orders routed through the Plan to other markets and therefore routed orders directly through the Plan without identifying a member or subscriber of the destination market.\(^7\) Because no member or subscriber of the destination market was involved in the transaction, there was no mechanism for the destination market to collect the Covered Sale Fee. The agreements provided for in Phlx Rule 607 permitted destination markets to collect the Covered Sale Fee for orders routed through the Plan that did not involve members or subscribers of the destination market. Now that the Plan has terminated, all access to the destination market is provided through members or subscribers, which are subject to the fees charged pursuant to rule or subscriber agreement.

Therefore, Phlx proposes to delete that section of Phlx Rule 607 referring to agreements with other exchanges and ADF Participants. Phlx does not intend that this deletion would affect any rights or obligations that have accrued to any party up to this point in time pursuant to any such agreements.


b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^8\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^9\) in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

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(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act\textsuperscript{10} and Rule 19b-4(f)(6) thereunder.\textsuperscript{11} Phlx requests that the Commission waive the 30-day operative delay and make the proposed rule change effective upon filing. Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest, because the proposed rule change deletes language in Phlx Rule 607 that is no longer needed due to the termination of the Plan.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.


\textsuperscript{11} 17 CFR 240.19b-4(f)(6).
Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amend Phlx Rule 607

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4\(^2\) thereunder, notice is hereby given that on ______________________ 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to amend Phlx Rule 607 to remove language regarding the NMS Linkage Plan ("Plan"). The Plan was utilized by certain exchanges, including Phlx, for the purpose of routing and receiving orders in NMS Stocks. The Plan ended by its own terms on June 30, 2007.\(^5\)

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The text of amended Phlx Rule 607 is set forth below:

Brackets indicate deletions.

Rule 607. Covered Sale Fee

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses.

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions on another exchange or on a Participant in NASD's Alternative Display Facility ("ADF Participant"), which were routed through the Exchange's Routing Facility, as described in Rule 185(g), during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

[The Exchange may enter into arrangements with other exchanges or ADF Participants to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through the NMS Linkage Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the NMS Linkage Plan.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.
A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update Phlx Rule 607 to reflect the termination of the Plan. Phlx Rule 607 permits Phlx to collect the Covered Sale Fee\(^6\) from its members and member organizations. In order to facilitate the collection of the Covered Sale Fee, Phlx amended Phlx Rule 607 to permit the Exchange to enter into agreements with other exchanges and with Participants in NASD's (n/k/a FINRA) Alternative Display Facility ("ADF Participant") to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through the Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the Plan.\(^7\)

With the termination of the Plan, the agreements with the other exchanges and the ADF Participants are no longer needed.\(^8\) When the Plan began, certain exchanges and ADF Participants were unable to supply clearing or member information on orders routed through the Plan to other markets and therefore routed orders directly through the Plan.

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\(^6\) Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange on members and member organizations.


without identifying a member or subscriber of the destination market.\(^9\) Because no member or subscriber of the destination market was involved in the transaction, there was no mechanism for the destination market to collect the Covered Sale Fee. The agreements provided for in Phlx Rule 607 permitted destination markets to collect the Covered Sale Fee for orders routed through the Plan that did not involve members or subscribers of the destination market. Now that the Plan has terminated, all access to the destination market is provided through members or subscribers, which are subject to the fees charged pursuant to rule or subscriber agreement.

Therefore, Phlx proposes to delete that section of Phlx Rule 607 referring to agreements with other exchanges and ADF Participants. Phlx does not intend that this deletion would affect any rights or obligations that have accrued to any party up to this point in time pursuant to any such agreements.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{10}\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^{11}\) in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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\(^{10}\) 15 U.S.C. 78f(b).

B. **Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

III. **Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. Phlx requests that the Commission waive the 30-day operative delay and make the proposed rule change effective upon filing. Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest, because the proposed rule change deletes language in Phlx Rule 607 that is no longer needed due to the termination of the Plan.

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IV. **Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic comments:**

- Use the Commission’s Internet comment form
  

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-85 on the subject line.

**Paper comments:**

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site ([http://www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx.
All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-85 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary